BILL # HB 2717

TITLE: cigarette sales; licensing; luxury tax

SPONSOR: Bradley

STATUS: As Introduced

REQUESTED BY: House

PREPARED BY: Brian Cary

FISCAL ANALYSIS

Description

This bill increases criminal penalties, civil penalties, and fines for failing to affix tax stamps to cigarette packages, use of counterfeit stamps, or failure to pay taxes on cigarettes. The bill also provides for the destruction of seized cigarettes and requires distributors and retailers that intentionally defraud the state to forfeit all fixtures, equipment, materials and personal property on their premises to the state. All distributors, manufacturers and retailers of cigarettes in Arizona would be required to pay new license fees and meet additional licensing and reporting requirements.

Estimated Impact

JLBC Staff estimates that passage of the bill would generate at least an additional $149,000 annually to the General Fund beginning in FY 2006 from the additional license fees required by the bill. Additional revenues from seized properties will depend on the value of the seized property. Proceeds from the sale of seized property also would go to the General Fund.

Additional revenue from taxes collected on previously untaxed cigarettes would be distributed according to statute. Of the $1.18 in tax collected for each package of cigarettes sold, the General Fund receives 16 cents, the Corrections Fund receives 2 cents, and the remaining $1 is distributed primarily to the Department of Health Services and AHCCCS.

The Department of Revenue (DOR) provided some estimates of the potential revenue impact for the bill's fines and penalties. Using data from eight actual cigarette tax violations, DOR estimated a net fiscal year impact of $9.4 million. However, more than $9 million of this amount would have been generated by a single large seizure. While large volume violations may be uncovered and prosecuted in future years, the bill may have a deterrent effect that would reduce future illegal activity and increase tobacco stamp collections.

While DOR did provide estimates of the bill's impact on fines generated and additional license fees, it did not provide estimates of the potential costs related to the bill's additional licensing and reporting requirements.

Analysis

DOR estimated that the additional license requirements and fees required by the bill would generate a net increase of approximately $11,100 per year in fees collected from cigarette distributors and manufacturers. The bill also imposes a new license fee of $25 per year on cigarette retailers. JLBC Staff referred to the 1997 Census of Retail Trade to estimate the number of retail establishments that sell cigarettes in Arizona. In 1997, there were approximately 4,276 retailers in the state that sold cigarettes, primarily food stores, convenience stores, service stations and pharmacies. Using a 3% annual growth rate, we estimated the number of cigarette retailers would increase to 5,498 in FY 2006. At $25 per license, an additional $149,000 in revenue would be generated in FY 2006.

HB 2717 authorizes the state to seize and destroy cigarettes involved in any tax law violation. If a distributor or retailer intentionally defrauds the state, the bill authorizes the state to seize assets from the violator's premises. This provision could generate additional revenue to the General Fund but the monies generated would depend on the number of seizures and the value of the assets.

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Analysis (Cont'd)

DOR provided data on eight recent illegal cigarette seizures believed to be representative of activity that would generate additional revenue in the form of fines that would be authorized by the bill. The seizure ranged from 17 cartons up to 44,510 cartons of cigarettes. The value of fines plus taxes owed under current statute was compared to the monetary penalties provided by the bill.

According to DOR, under current statute these seizures generated $53,000 in fines plus an additional $583,000 for the purchases of tax stamps in order to comply, or a total of $636,000. Had the bill's provisions been in force, the seizures would have generated $10.1 million in fines plus additional taxes paid, or approximately $9.4 million more than under current law. Of this amount, $9.3 million would have been yielded by the largest seizure, while two others would have accounted for another $722,000. It is reasonable to assume that enforcing the bill's provisions could generate large increases in fines and delinquent tax collections, but the severity of the penalties may also deter large-scale fraud like that cited in DOR's analysis.

While DOR acknowledged that the substantial increases in reporting and oversight required by the bill would create additional work loads, it did not provide an estimate of these costs.

Local Government Impact

None.

4/7/05